

Victim Consultation With the Prosecuting Attorney & Other Rights

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This chapter discusses crime victims' rights to consult with the prosecuting attorney about case disposition, prompt return of victims' property, and employer penalties for punishing crime victims for attending court proceedings. Crime victims in Michigan have constitutional rights to fair treatment and to consult with the prosecuting attorney. Because the majority of criminal and juvenile delinquency cases are resolved through plea agreements, diversion, or informal procedures, consultation with the prosecuting attorney disposing of the case through one of these methods is crucial to crime victims. The prompt return of a victim's property and penalties for employers who punish victims for attending court proceedings also help to ensure fair treatment of crime victims.

The following subjects are discussed in this chapter:

- F victim consultation with the prosecuting attorney prior to finalizing a plea agreement or using diversion or some other informal method of disposing of a criminal or juvenile delinquency case;
- F the meaning of the term "consultation" and the role of "victim-witness assistants" in ensuring proper understanding of and compliance with the "consultation" requirement;

- F the use of victim impact information when the court decides whether to accept a plea agreement that includes a recommendation regarding sentencing;
- F victim consultation with the prosecuting attorney prior to jury selection and trial;
- F prompt return of a victim's property taken during a criminal investigation; and
- F penalties against employers for prohibiting a victim or victim representative from attending court proceedings.

6.1 The Victim's Constitutional Rights to Be Treated Fairly and to Confer With the Prosecuting Attorney

Crime victims' rights to be treated with fairness and respect for their dignity, and to confer with the prosecuting attorney, are preserved by the Michigan Constitution. Const 1963, art 1, § 24, states in relevant part:

“(1) Crime victims, as defined by law, shall have the following rights, as provided by law:

“The right to be treated with fairness and respect for their dignity . . . throughout the criminal justice process.

. . . .

“The right to confer with the prosecution.”

This chapter discusses the provisions of the “Crime Victim's Rights Act” (“CVRA”) and other law that are intended to enforce these rights.

6.2 The Victim's Right to Consult With the Prosecuting Attorney Prior to a Plea Agreement or Diversion in Criminal Cases

In all cases falling under the CVRA, crime victims have the right to consult with the prosecuting attorney before the prosecuting attorney finalizes a plea agreement with the defendant or juvenile, agrees to placement of the defendant or juvenile in a pretrial diversion program, or agrees to an informal disposition of a juvenile. However, because the procedures in criminal and juvenile delinquency cases differ, victims' rights to consult with the prosecutor differ depending upon the type of case involved. The victim's right to consult with the prosecutor in criminal cases is discussed in this section, and the victim's right to consult with the prosecutor in juvenile delinquency cases is discussed in Sections 6.4–6.5, below.

MCL 780.756(3); MSA 28.1287(756)(3), in the felony article of the CVRA, states:

“Before finalizing any negotiation that may result in a dismissal, plea or sentence bargain, or pretrial diversion, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim’s views about the disposition of the prosecution for the crime, including the victim’s views about dismissal, plea or sentence negotiations, and pretrial diversion programs.”

Article 3, the misdemeanor article of the CVRA, contains a similar provision, except that if the defendant has entered a plea of guilty or nolo contendere at arraignment, the victim does not have a right to consult with the prosecuting attorney. MCL 780.816(3); MSA 28.1287(816)(3), states:

“If the defendant has not already entered a plea of guilty or nolo contendere at the arraignment, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the serious misdemeanor, including the victim’s views about dismissal, plea or sentence negotiations, and pretrial diversion programs before finalizing any negotiation that may result in a dismissal, plea or sentence bargain, or pretrial diversion.”

6.3 The Role of Victim Impact Information in “Sentence Bargaining”

Plea agreements between the prosecuting attorney and the defendant may be limited to agreement about the offense to which defendant will plead. Plea agreements may also contain terms that “provide for the defendant’s plea to be made in exchange for a specific sentence disposition or a prosecutorial sentence recommendation.” MCR 6.302(C)(3). If the prosecutor and defendant agree that the defendant will plead guilty to an offense but the agreement does not address the sentence to be imposed upon the defendant, the court has limited authority to reject the plea agreement. MCR 6.302(C)(3) and Staff Comment to MCR 6.302.* However, if the plea agreement contains a “specific sentence disposition” or a “prosecutorial sentence recommendation,” the court does have authority to reject both the underlying plea and the sentence agreement or recommendation. *People v Grove*, 455 Mich 439, 455 (1997).

If the plea agreement contains a “specific sentence disposition” or a “prosecutorial sentence recommendation,” the court may:

“(a) reject the agreement; or

*The court must consent to entry of a plea of nolo contendere. MCR 6.301(B). In addition, the court may reject a defendant’s plea tendered after a “plea cutoff date” established in a pretrial scheduling order. *People v Grove*, 455 Mich 439, 464–65 (1997).

*See Section 9.2(A) for a more complete discussion of victim impact information in presentence investigation reports.

“(b) accept the agreement after having considered the presentence report, in which event it must sentence the defendant to the sentence agreed to or recommended by the prosecutor; or

“(c) accept the agreement without having considered the presentence report; or

“(d) take the plea agreement under advisement.” MCR 6.302(C)(3)(a)–(d).

In deciding whether to reject or accept a plea agreement that includes a “specific sentence disposition” or “prosecutorial sentence recommendation,” the court must consider any information provided about the impact of the crime on the victim. If the judge accepts the agreement without considering the presentence investigation report or takes the plea agreement under advisement, the acceptance of the agreement is only conditional. The judge must defer final acceptance of the plea agreement until after he or she examines the presentence investigation report, which may include victim impact information or a victim impact statement. *People v Killebrew*, 416 Mich 189, 207, 209 (1982).*

In addition to sentence agreements and recommendations, the parties may ask the court for a preliminary sentencing evaluation. In *People v Cobbs*, 443 Mich 276, 283–85 (1993), the Michigan Supreme Court outlined the proper procedure in these cases, including the role of victim impact information:

“At the request of a party, and not on the judge’s own initiative, a judge may state *on the record* the length of sentence that, on the basis of the information then available to the judge, appears to be appropriate for the charged offense.

. . . .

“The judge’s preliminary evaluation of the case does not bind the judge’s sentencing discretion, since additional facts may emerge during later proceedings, in the presentence report, through the allocution afforded to the prosecutor and the victim, or from other sources.

. . . .

[T]he victim’s right to participate must be fully recognized. Crime victims have rights provided in the constitution of this state, and implemented by a number of statutory provisions. Among the rights of a crime victim are the right of allocution at sentencing and to provide an impact statement for inclusion in the presentence report.

These events will each take place if the victim wishes, and the judge's final sentencing decision must await receipt of all the necessary information." (Emphasis in original; footnotes omitted.)

6.4 Limitations on the Court's Authority to Utilize Informal Procedures in Juvenile Delinquency Cases

A. The Court Must "Accept" Certain Petitions

Under the Juvenile Code and related court rules, the Family Division of Circuit Court has several procedural options when a petition (including a citation or appearance ticket for non-felony offenses) is filed in a delinquency proceeding. MCL 712A.11(1)–(2); MSA 27.3178(598.11)(1)–(2), and MCR 5.931(C).^{*} Pursuant to MCR 5.932(A)(1)–(5) (preliminary inquiries) and MCR 5.935(B)(3) (preliminary hearings), the court may choose one of the following procedural avenues that will best serve the interests of the juvenile and the public:

- F deny authorization of the petition or dismiss the petition;
- F before authorizing the petition, refer the matter to a public or private agency pursuant to the Juvenile Diversion Act;
- F direct that the parent and juvenile appear so that the matter can be handled through further informal inquiry;
- F after authorizing the filing of the petition, proceed on the consent calendar; or
- F after authorizing the filing of the petition, proceed on the formal calendar.

However, a provision of the CVRA requires the court to "accept" a petition if it properly alleges that the juvenile has committed a criminal offense that falls under Article 2 of the CVRA.^{*} MCL 780.786(1); MSA 28.1287(786)(1), states as follows:

"The court shall accept a petition submitted by a prosecuting attorney that seeks to invoke the court's jurisdiction for a juvenile offense, unless the court finds on the record that the petitioner's allegations are insufficient to support a claim of jurisdiction under section 2(a)(1) of [the Juvenile Code]."

Section 2(a)(1) of the Juvenile Code, MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), gives the court jurisdiction over juveniles charged with criminal offenses. Thus, if a petition properly alleges that the juvenile committed a criminal offense and that offense is a "juvenile offense" under

^{*}The limitations discussed in Sections 6.4(A) and (B) are effective June 1, 2001.

^{*}See Section 3.2(J).

the CVRA, MCL 780.786(1); MSA 28.1287(786)(1), requires the court to “accept” the petition. “Accept” does not mean “authorize the petition for filing.” See MCR 5.903(A)(15) (a petition is “authorized for filing” when a judge or referee gives written permission to file the petition). Because the first three procedural options listed above must occur before the court authorizes a petition to be filed, those options would be unavailable when a “juvenile offense” is alleged if “accept” means “authorize the petition for filing.” See MCL 712A.11(7); MSA 27.3178(598.11)(7), and MCL 722.823(1); MSA 25.243(53)(1) (the provisions of the Juvenile Diversion Act may only be utilized prior to the filing or authorization of a petition).

1. Although the court must “accept” a petition properly alleging a juvenile offense, the court retains discretion to utilize informal or formal procedures in a juvenile delinquency case.

Under MCL 712A.11(2); MSA 27.3178(598.11)(2), only the prosecuting attorney may file a petition alleging that a juvenile has committed a criminal offense. Although juvenile delinquency proceedings are not criminal proceedings, MCL 712A.1(2); MSA 27.3178(598.1)(2), the Court of Appeals has stated that “the procedures for invoking juvenile court jurisdiction in cases where a child is alleged to have committed a criminal act are closely analogous to the adversary criminal process.” *In the Matter of Sylvester Wilson*, 113 Mich App 113, 121 (1982). Nonetheless, MCL 712A.11(2); MSA 27.3178(598.11)(2), assigns to the court the authority to determine whether to authorize a petition and utilize formal procedures to handle a juvenile delinquency case. See *Oklahoma v Juvenile Division, Tulsa County District Court*, 560 P2d 974, 975–76 (Okla Crim App, 1977) (the intake function is neither wholly judicial nor wholly prosecutorial in nature, and the Legislature could properly assign the function to the judiciary which is better trained to balance the interests of society and the child).

2. The Michigan Court Rules govern practice and procedure in Michigan courts.

The Michigan Supreme Court has exclusive authority to promulgate rules governing “practice and procedure” in the courts; the Legislature, on the other hand, has sole authority to enact substantive law. Const 1963, art 6, § 5. As explained above in Section 6.4(A), MCR 5.932(A)(1)–(5) (preliminary inquiries) and MCR 5.935(B)(3) (preliminary hearings) allow the “juvenile court” to choose one of several procedural avenues that will best serve the interests of the juvenile and the public. Because the procedures contained in the CVRA limit that authority, the issue may arise as to whether the Legislature has impermissibly infringed upon the court’s authority to make rules regarding practice and procedure. First, it must be determined whether the statute and court rules actually conflict. See MCR 1.104 and *McDougall v Schanz*, 461 Mich 15, 25 (1999) (where the Legislature enacted a statute prescribing qualifications for expert witnesses in medical malpractice cases because it was “dissatisfied with the manner in which some courts were exercising their discretion,” that statute and an existing rule of evidence had an “inherent conflict”). If the statute and court rule conflict, it must be

determined whether the statute is procedural or substantive in nature. See *Id.* at 30 (a statute impermissibly infringes the Supreme Court’s rulemaking authority *only* when no policy consideration other than judicial efficiency can be identified).

B. Required Procedures Before Removing the Case From the Adjudicative Process

The CVRA also requires the court to notify the prosecuting attorney and, in some cases, conduct a hearing before utilizing informal procedures that remove the case from the adjudicative process. MCL 780.786b(1); MSA 28.1287(786b)(1), states as follows:

“Except for a dismissal based upon a judicial finding on the record that the petition and the facts supporting it are insufficient to support a claim of jurisdiction under section 2(a)(1) of [the Juvenile Code], a case involving the alleged commission of [a juvenile offense] . . . shall not be diverted, placed on the consent calendar, or made subject to any other prepetition or preadjudication procedure that removes the case from the adjudicative process unless the court gives written notice to the prosecuting attorney of the court’s intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process. Before any formal or informal action is taken, the prosecutor shall give the victim notice of the time and place of the hearing on the proposed removal of the case from the adjudicative process. The victim has the right to attend the hearing and to address the court at the hearing. As part of any other order removing any case from the adjudicative process, the court shall order the juvenile or the juvenile’s parents to provide full restitution as provided in [MCL 780.794; MSA 28.1287(794).]”

Thus, if a factually sufficient petition alleges that the juvenile committed a criminal offense that brings the case under the juvenile article of the CVRA,* the court must give written notice to the prosecuting attorney and allow him or her to address the court on the issue before removing the case from the adjudicative process. The prosecuting attorney, in turn, must notify the victim of the time and place of a hearing on the issue. Neither formal nor informal procedures may be used until the prosecutor notifies the victim. The victim has the right to attend a hearing and address the court on the issue. If the requirements of MCL 780.794; MSA 28.1287(794), are met, the court must order restitution in conjunction with the use of any informal procedure.

These procedures are required when the court intends to utilize juvenile diversion, the consent calendar, or “any other prepetition or preadjudication

*See Section 3.2(J).

procedure that removes the case from the adjudicative process” MCL 780.786b(1); MSA 28.1287(786b)(1). These informal procedures are briefly described below.

*Juveniles accused of committing “assaultive crimes” cannot be diverted from court jurisdiction. See Section 3.2(A) for the list of “assaultive crimes.”

- F As noted above in Section 6.4(A), diversion must occur before a petition is filed or authorized for filing. MCL 722.823(1); MSA 25.243(53)(1).^{*} A law enforcement agency may divert a case by releasing a juvenile to the custody of his or her parent, guardian, or custodian and discontinuing an investigation. A court may divert a case if the juvenile and his or her parent, guardian, or custodian agree in writing to work with a public or private agency to resolve the problem that led to court intervention. MCL 722.822(c)(i)–(ii); MSA 25.243(52)(c)(i)–(ii), and MCL 722.823(1)(a)–(b); MSA 25.243(53)(1)(a)–(b). For a more detailed discussion of juvenile diversion, see Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998), Section 6.3.
- F The consent calendar provides a mechanism for the juvenile and his or her parent to consent to the court’s jurisdiction. If the court finds that “protective and supportive action by the court will serve the best interests of the juvenile and the public,” the court may utilize the consent calendar. MCR 5.932(B). If the court finds the allegations in the petition to be true, the court may order a disposition but may not remove the juvenile from his or her parent’s custody. MCR 5.932(B)(2). Many courts require the juvenile to enter a plea of admission before placing the case on the consent calendar. For an explanation of the consent calendar, see *In re Neubeck*, 223 Mich App 568, 571–72 (1997), and Miller, *Use of the Consent Calendar and Retention of Records in Cases Involving Juvenile Traffic Offenses* (MJJ, 2000), Sections 1.3–1.4.
- F In addition to the consent calendar, the court may “take a plea of admission or no contest under advisement” pursuant to MCR 5.941(D) and later dismiss the case if the juvenile complies with the court’s directives. See, for example, *In the Matter of Raphael Hastie*, unpublished opinion of the Court of Appeals, decided March 28, 2000 (Docket No. 213880) (a plea taken under advisement in a first-degree criminal sexual conduct case was later properly accepted by the court where the juvenile did not successfully complete therapy) and *In re JS & SM*, 231 Mich App 92, 95 (1998), overruled on other grounds 462 Mich 341, 353 (2000).

6.5 The Victim's Right to Consult With the Prosecuting Attorney Prior to a Plea Agreement or Informal Disposition in Juvenile Delinquency Cases

Article 2 of the CVRA, the juvenile article, gives victims of juvenile offenses certain rights to consult with the prosecuting attorney prior to reducing the original charge. MCL 780.786(4); MSA 28.1287(786)(4), states:

“If the juvenile has not already entered a plea of admission or no contest to the original charge at the preliminary hearing, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim's views about the disposition of the offense, including the victim's views about dismissal, waiver, and pretrial diversion programs, before finalizing any agreement to reduce the original charge.”

As indicated in this statute, if the juvenile does not enter a plea to the offense charged at the preliminary hearing, the prosecuting attorney must offer the victim an opportunity to consult with him or her “before finalizing any agreement to reduce the original charge.”

MCL 780.786b(2); MSA 28.1287(786b)(2), provides a similar right of consultation prior to disposition of the case through an informal procedure. That section states:

“Before finalizing any informal disposition, preadjudication, or expedited procedure, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about that manner of disposing of the case.”*

*This provision is effective June 1, 2001.

6.6 The Meaning of “Consultation” and the Role of the “Victim-Witness Assistant”

Consultation between a victim and the prosecuting attorney assists the prosecutor in formulating an appropriate disposition and encourages victim participation in the proceedings. However, the meaning of “consultation” in the context of the CVRA is not clear. The relevant statutes* require the prosecuting attorney to provide the victim with an “opportunity to consult” so that the prosecuting attorney may “obtain the victim's views” about case disposition. MCL 780.756(3); MSA 28.1287(756)(3), MCL 780.816(3); MSA 28.1287(816)(3), MCL 780.786(4); MSA 28.1287(786)(4), and MCL 780.786b(2); MSA 28.1287(786b)(2). To “consult” means “to ask the advice or opinion of [another]” or “to deliberate together.” *Webster's Seventh New Collegiate Dictionary* (1972), p 179.

*See Sections 6.2 (criminal proceedings) and 6.5 (juvenile delinquency proceedings).

Some prosecuting attorneys may believe that they are only required to inform the victim of the existence of a plea offer or the possibility of pretrial diversion, while some victims may believe that they have the authority to “veto” plea offers or referrals to diversion programs. The Advisory Committee for this manual suggests that, rather than simply informing victims of a plea offer or appropriate diversion programs, prosecutors should actively solicit and consider victims’ input before taking dispositive action. On the other hand, victims should be made aware of the following:

- F The prosecuting attorney may engage in negotiations with the offender before seeking the victim’s input, as all articles of the CVRA require consultation with the victim only before *finalizing* a plea agreement or informal disposition. MCL 780.756(3); MSA 28.1287(756)(3), MCL 780.816(3); MSA 28.1287(816)(3), MCL 780.786(4); MSA 28.1287(786)(4), and MCL 780.786b(2); MSA 28.1287(786b)(2).
- F The prosecuting attorney has authority to determine the charges to be brought against, and whether to accept a plea offer from, a defendant or juvenile. *In the Matter of Sylvester Wilson*, 113 Mich App 113, 121 (1982) (because the “juvenile court” does not have supervisory power over the prosecuting attorney, the court erred by accepting a plea to an uncharged offense over the prosecutor’s objection), and *People v Williams*, 244 Mich App 249 (2001) (crime victims do not have the authority to determine “whether the prosecution of a crime should go forward or be dismissed”).
- F The prosecuting attorney may be ethically unable to abide by the victim’s wishes, “as when it would defeat an obligation to accord similar sanctions for similar crimes, or the evidence cannot sustain a conviction at a higher level.” *New Directions from the Field: Victims’ Rights and Services for the 21st Century* (Washington, DC: United States Department of Justice, 1998), p 87. See also MRPC 3.8(a) (prosecutor shall “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause”).

The Advisory Committee for this manual also recommends that a “victim-witness assistant” act as an intermediary between the victim and prosecuting attorney regarding plea and diversion procedures. Early in the case, the “victim-witness assistant” should also notify the victim of the possibility of a plea agreement and its likely impact on the sentence or disposition imposed, and of the possibility of the use of diversion or other informal case disposition methods.

If the prosecuting attorney does not proceed with a prosecution, the prosecutor or “victim-witness assistant” may advise the victim of other available remedies, including civil actions for monetary damages. *New Directions from the Field: Victims’ Rights and Services for the 21st Century* (Washington, DC: United States Department of Justice, 1998), p 88.*

*See Chapter 12.

6.7 Right to Confer With the Prosecuting Attorney Before Jury Selection and Trial

In cases falling under the felony and misdemeanor articles of the CVRA, the victim has the right, upon request, to confer with the prosecuting attorney prior to trial. This right is not extended to victims in juvenile delinquency proceedings.

MCL 780.760; MSA 28.1287(760), which is contained in the felony article of the CVRA, states:

“Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the selection of the jury and prior to the trial of the defendant.”

MCL 780.820; MSA 28.1287(820), provides for a pretrial conference between the victim and prosecuting attorney in cases falling under the misdemeanor article. That section states:

“Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the trial of the defendant.”

As with the required “consultation” between prosecuting attorney and victim regarding plea agreements, diversion, and informal dispositions, the term “confer” in this context is ambiguous.* “Confer” means “compare views” and is synonymous with “consult.” *Webster’s Seventh New Collegiate Dictionary* (1972), p 174. Thus, the same considerations should be applied in this context as with the required “consultation” between victim and prosecutor regarding plea agreements, diversion, and informal dispositions.

*See Sections 6.2–6.6, above, for discussion of these requirements.

6.8 Return of the Victim's Property

All three articles of the CVRA contain substantially similar provisions requiring law enforcement agencies to return victims’ property to them. The general rule requires “prompt” return of a victim’s property taken during the investigation of the offense. Unless it is recovered by a law enforcement agency and used in the investigation of the offense, property taken by the offender during the offense does not fall under this general rule. MCL 780.754(1); MSA 28.1287(754)(1), in the felony article, states:

“The law enforcement agency having responsibility for investigating a reported crime shall promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except as provided in subsections (2) to (4).” See also MCL 780.783(1); MSA 28.1287(783)(1) (applies to juvenile delinquency proceedings), and MCL 780.814(1); MSA

28.1287(814)(1) (applies to “serious misdemeanors” committed by adults).

MCL 780.754(2)–(4); MSA 28.1287(754)(2)–(4), provide three exceptions to the requirement that a law enforcement agency promptly return the victim’s property. The law enforcement agency must retain the property if:

- F it is contraband;
- F the ownership of the property is in dispute (until the dispute is resolved); or
- F it is a weapon used in the commission of the crime or other evidence of the crime if the prosecuting attorney certifies that there is a need to retain the evidence “in lieu of a photograph or other means of memorializing its possession by the agency.”

For substantially similar provisions in the juvenile and misdemeanor articles, see MCL 780.783(2)–(4); MSA 28.1287(783)(2)–(4), and MCL 780.814(2)–(4); MSA 28.1287(814)(2)–(4).

In *W Mason, Inc v Jackson County Prosecutor*, 95 Mich App 447, 449 (1980), the plaintiff-victim filed a motion seeking the return of its bulldozer and trailer taken during a larceny and murder or an order forcing the defendant to pay the reasonable rental value of the bulldozer and trailer. The defendant conceded that the crime lab had checked the bulldozer thoroughly for evidence. The trial court denied the motion. The issue on appeal was “[h]ow long . . . the state [can] hold in *custodia legis* incriminating evidence belonging to an innocent third party seized from a criminal defendant pursuant to a valid arrest?” *Id.* at 450. The Court of Appeals construed both MCL 764.25; MSA 28.884 (disposition of incriminating evidence after arrest), and MCL 780.655; MSA 28.1259(5) (disposition of evidence seized pursuant to a search warrant). The Court concluded that a law enforcement agency’s continued possession of an innocent third party’s property must be necessary or the property must be returned. *Id.* at 450–51. In this case, continued possession was unnecessary because the crime lab had thoroughly examined the property for relevant evidence, and photographs of the bulldozer and trailer would have been admissible. *Id.* at 451. The Court also noted that the plaintiff’s owner made his living with the bulldozer. *Id.* The Court of Appeals ordered the defendant to pay the reasonable rental value of plaintiff’s bulldozer during the period that the plaintiff was unnecessarily deprived of its use. *Id.* at 452.

6.9 Criminal Penalties Against Employers Who Punish Victims or Victim Representatives for Court Attendance

An employer who penalizes a crime victim* for attending court in certain circumstances may be “guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, and may be punished for contempt of court.” MCL 780.762(1); MSA 28.1287(762)(1), MCL 780.790(1); MSA 28.1287(790)(1), and MCL 780.822(1); MSA 28.1287(822)(1). For the foregoing penalties to apply, the prosecuting attorney must have subpoenaed the victim or requested that the victim attend court “for the purpose of giving testimony,” and the employer or the employer’s agent must have done any of the following:

- F threatened to discharge the victim from employment;
- F threatened to discipline the victim;
- F discharged the victim from employment;
- F disciplined the victim;
- F caused the victim to be disciplined; or
- F caused the victim to be discharged from employment. *Id.*

MCL 780.762(2); MSA 28.1287(762)(2), MCL 780.790(2); MSA 28.1287(790)(2), and MCL 780.822(2); MSA 28.1287(822)(2), contain similar protections for “victim representatives.” For criminal penalties to apply, the victim representative must attend or desire to attend court to be present during the testimony of the victim. *Id.*

Under MCL 780.762(3); MSA 28.1287(762)(3), MCL 780.790(3); MSA 28.1287(790)(3), and MCL 780.822(3); MSA 28.1287(822)(3), “victim representative” means:

- F the guardian or custodian of a child of a deceased victim if the child is less than 18 years old;
- F the parent, guardian, or custodian of a victim of an assaultive crime, offense, or serious misdemeanor if the victim is less than 18 years old; or
- F a person who has been designated to act in place of a victim of an assaultive crime, offense, or serious misdemeanor for the duration of the victim’s physical or emotional disability.

*See Section 3.2(O) for the statutory definition of “victim.”

